

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ALEX CATALA,

Plaintiff,

- against -

ORDER

19 CV 7106 (ARR)(LB)

CNS PHYSICAL THERAPY AND
ACUPUNCTURE, P.C.
and TAE JUNG KIM,

Defendants.

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BLOOM, United States Magistrate Judge:

Plaintiff Alex Catala commenced this action against defendants on December 19, 2019. ECF No. 1. Plaintiff's complaint alleges that defendants violated his rights under the Fair Labor Standards Act ("FLSA") and the New York Labor Law by denying them overtime compensation and the appropriate wage notices and wage statements while he was employed as a physical therapy aide by defendants. *Id.* at ¶¶ 18, 29-32. The parties have settled this case. ECF No. 20. The parties now move for Court approval of their settlement agreement ("Agreement"). Motion for Settlement Approval, "Mot. Settl.", ECF No. 20; Agreement, Exhibit A. I have reviewed the motion and find the parties' settlement agreement fair and reasonable. Therefore, the motion for settlement approval should be granted.

"Rule 41(a)(1)(A)(ii) stipulated dismissals settling FLSA claims with prejudice require the approval of the district court or the [Department of Labor] to take effect." *Cheeks v. Freeport Pancake House, Inc.*, 796 F.3d 199, 206 (2d Cir. 2015). The settlement should be approved if the proposed agreement "reflects a reasonable compromise over contested issues." *Kochilas v. Nat'l Merchant Servs., Inc.*, No. 14 CV 311, 2015 WL 5821631, at *7 (E.D.N.Y. Oct. 2, 2015) (citation omitted). Here, the parties have agreed to settle the case for a total settlement amount of \$13,000, of which plaintiff shall recover \$8,904¹. Mot. Settl. at 4; Agreement at 1. Defendants shall pay

¹ Plaintiff's letter motion in support of the settlement agreement states that \$8,904.00 will be paid to plaintiff, Mot. Settl. at 4, however, the agreement itself states the amount as \$8,184, Agreement at 1-2. Plaintiff's counsel concedes that payment of \$8,904 to plaintiff would be fair and reasonable with the balance of the settlement paid as attorney's fees. ECF No. 21.

plaintiff \$13,000 in multiple installments upon the Court's approval of the settlement agreement as fair and reasonable. Agreement at 1–2. After the Court's approval, defendant will initially issue two checks, one payable to plaintiff for \$3,904 and the other payable to plaintiff's counsel for \$4,096. Id. The remaining sum of \$5,000 will thereafter be paid in five subsequent consecutive monthly installments of \$1,000 each. Id. at 2. The Agreement contains a release limited to this wage and hour case, id. at 2–3, and does not contain a confidentiality or non-disparagement clause. The parties consent to the Court retaining jurisdiction of this action for the purpose of enforcing the terms of the Agreement. Id. at 4.

Plaintiff shall recover \$3,321 in attorney's fees and \$775.00 in costs, for a total of \$4,096. Mot. Settl. at 4; Agreement at 1; ECF No. 21. Plaintiff's attorney's fee request amounts to less than one-third of the total settlement; a one-third contingency fee is generally approved as a fair and reasonable attorney's fee award. See Lopez v. Poko-St. Ann L.P., 176 F. Supp. 3d 340, 343 (S.D.N.Y. 2016) (courts in this Circuit generally approve of attorney's fees that are limited to a one-third contingency). The Court should find that the requested attorney's fee of less than one-third of the settlement amount is fair and reasonable in this case. 29 U.S.C. § 216(b); Wolinsky v. Scholastic, Inc., 900 F. Supp. 2d 332, 336 (S.D.N.Y. 2012). Furthermore, plaintiff's costs of \$775 are reasonable.

Accordingly, the Court should grant the instant motion (ECF No. 20) and approve the parties' settlement agreement as fair and reasonable. Of the \$13,000 total settlement, plaintiff shall recover \$8,904.00 and his attorney's fee and costs shall be \$4,096.

SO ORDERED.

/S/
LOIS BLOOM
United States Magistrate Judge

Dated: August 28, 2020
Brooklyn, New York